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STATE FOR EUR/NCE DKOSTELANCIK AND MSESSUMS,
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STATE FOR INL
JUSTICE FOR OIA AND AFMLS
TREASURY FOR FINCEN
DEA FOR OILS AND OFFICE OF DIVERSION CONTROL

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SUBJECT: POLAND 2005-2006 INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT (INCSR) PART II - FINANCIAL CRIMES AND MONEY LAUNDERING

REF: SECSTATE 210351

¶1. Poland's geographic location places it directly along one of the main routes between the former Soviet Union republics and Western Europe used by narcotics-traffickers and organized crime groups. According to Polish government estimates, narcotics-trafficking, organized crime activity, auto theft, smuggling, extortion, counterfeiting, burglary, and other crimes generate criminal proceeds in the range of $2-3 billion yearly. The Government of Poland (GOP) estimates the unregistered or gray economy, used primarily for tax evasion, may be as high as 15 percent of Poland's $280240 billion GDP; it believes the black economy is only one percent of GDP. Poland's entry into the European Union (EU) in May 2004 increased its ability to control its eastern borders, thereby allowing Poland to become more effective in its efforts to combat all types of crime, including narcotics-trafficking and organized crime.

¶2. Poland's banks serve as transit points for the transfer of criminal proceeds. As of December 2004, 55 commercial banks were licensed for operation in Poland, as were slightly less than 590 "cooperative banks" that serve the rural and agricultural community. The GOP considers the nation's banks, insurance companies, and brokerage houses to be important venues of money laundering. Polish casinos may likewise be sites for money laundering activity. According to the GOP, fuel smuggling, during which local companies and organized crime groups seek to avoid excise taxes by forging gasoline delivery documents, is a major source of proceeds to be laundered. It is also believed that some money laundering in Poland derives from Russia and/or other countries of the former Soviet Union.

¶3. The Criminal Code criminalizes money laundering. Article 299 of the Criminal Code addresses self-laundering and criminalizes tipping off. In June 2001, the parliament passed amendments that broadened the definition of money laundering to encompass all serious crimes ("Act on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources," known as the "Act of 16 November"). In March 2003, Parliament further amended the law to broaden the definition of money laundering to include assets originating from illegal or undisclosed sources.

¶4. The National Security Strategy of Poland has labeled the anti-money laundering effort as a top priority. The GOP has worked diligently to bring its laws into full conformity with EU obligations. On November 16, 2000, a law went into effect that improves Poland's ability to combat money laundering (entitled "the November 2000 Act on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources"). The GOP has updated this law several times to bring it into conformity with EU standards and to improve its operational effectiveness. This law increases penalties for money laundering and contains safe harbor provisions that exempt financial institution employees from normal restrictions on the disclosure of confidential banking information. The law also provides for the creation of a Financial Intelligence Unit (FIU), the General Inspectorate of Financial Information (GIIF), housed within the Ministry of Finance, to collect and analyze large and suspicious transactions.

¶5. A major weakness of Poland's initial money laundering regime was that it did not cover many non-bank financial institutions that had traditionally been used for money laundering. To remedy this situation, between 2002 and 2004, the Parliament passed several amendments to the 2000 money laundering law. The amendments expand the scope of institutions subject to identity verification, record keeping, and suspicious transaction reporting requirements. Financial institutions subject to the reporting requirements prior to March 2004 amendments included banks, the National Depository for Securities, post offices, auction houses, antique shops, brokerages, casinos, insurance companies, investment and pension funds, leasing firms, private currency exchange offices, real estate agencies, and notaries public. The March 2004 amendments to the money laundering law widen the scope of covered institutions to

include lawyers, legal counselors, auditors, and charities, as well as the National Bank of Poland in its functions of selling numismatic items, purchasing gold, and exchanging damaged banknotes. It also requires casinos to report the purchase of chips worth 1,000 euros or more. The law's extension to the legal profession was not without controversy. Lawyers strongly opposed the new amendments, claiming that the law violates client/attorney confidentiality privileges.

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¶6. In 2002, Parliament adopted measures to bring the nation's anti-money laundering legislation into compliance with EU standards regarding the reporting threshold, and also amended Poland's customs law to require the reporting of any cross-border movement of more than 10,000 euros in currency or financial instruments. In addition to requiring that the GIIF be notified of all financial deals exceeding 15,000 euros, covered institutions are also required to file reports of suspicious transactions, regardless of the size of the transaction. Polish law also requires financial institutions to put internal anti-money laundering procedures into effect-a process that is overseen by the GIIF.

¶7. The GIIF began operations on January 1, 2001. In its first year of existence, the GIIF received over 350 suspicious transaction reports (STRs). In 2002, the GIIF received 670 STRs, from which prosecutors prepared 70 cases. In 2003, the GIIF received 965 STRs, resulting in the development of 152 cases by the Prosecutor's Office, and in 2004, there were 1397 STRs and 148 cases respectively. Between January and October 2005, the GIIF received 1,425 STRs, resulting in the creation of 169 cases. Banks filed eighty percent of the STRs submitted in 2004 and 90 percent of STRs in 2005. At a minimum, all reports submitted by the GIIF to the Prosecutor's Office have resulted in the instigation of initial investigative proceedings. Although Tthere were only 24four convictions under the money laundering law in 2004 (this figure is twice the number from 2003), and is number that is expected to further increase further in 2005. Mmany of the investigations begun by the GIIF have resulted in convictions for other non-financial offenses. As of October 2005, the GIIF received 26.1 million reports on transactions exceeding the threshold level. The GIIF receives on average 1.8 million reports per month.

¶8. The vast majority of required notifications to the GIIF are sent through a newly developed electronic reporting system, which is Europe's most technically sophisticated and collects more complete information than the previously required report regarding the transaction in question (e.g., how payment was made-cash or credit, where and when). Only a small percentage of notifications are now submitted by paper, mainly from small institutions, which lack the IT capacity to use the electronic system. Although the new system is an important advance for Poland's anti-money laundering program, the processing and analyzing of the large number of reports that are sent to the GIIF iswill prove to be a challenge for the understaffed FIU. To help improve the FIU's efficiency in handling the large volume of reports filed by obliged institutions, the GIIF plans to installed new analytical software that will permits advanced and detailed analysis of financial information.

¶9. The GIIF also does on-site training and compliance monitoring investigations. In 20054, the GIIF carried out 195 (15 in 2004) compliance investigations as compared to 15 in 2004, and received several hundred follow-up reports from institutions responsible for routinely supervising covered institutions. In January 2004, the GIIF introduced a new electronic learning course designed to familiarize obliged institutions with Poland's anti-money laundering regulations. In March 2005, an updated version of the course has been was installed on the Ministry of Finance website.

¶10. The Polish Code of Criminal Procedure, Article 237, allows for certain Special Investigative Measures. However, money laundering investigations are not specifically covered, although the organized crime provisions might apply in some cases. Two main police units deal with the detection and prevention of money laundering: the General Investigative Bureau and the Unit for Combating Financial Crime. Overall, both police units cooperate well with the GIIF. The Internal Security Agency (ABW) may also investigate the most serious money laundering cases.

¶11. A recognized need exists for an improved level of coordination and information exchange between the GIIF and law enforcement entities, especially with regard to the suspicious transaction information that the GIIF forwards to the National Prosecutor's Office. To alleviate this problem the GIIF and the National Prosecutor's Office signed a "cooperation agreement" in 2004. The agreement calls for the creation of a computer-based system that would facilitate information exchange between the two institutions. Work on the development of this new system is currently underway.

¶12. The GIIF is authorized to put a suspicious transaction on hold for 48 hours. The Public Prosecutor then has the right to suspend the transaction for an additional three months, pending a court decision. In 2004, Article 45 of the

criminal code was amended to further improve the government's ability to seize assets. On the basis of the amended article, an alleged perpetrator must prove that his assets have a legal source; otherwise, the assets are presumed to be related to the crime and as such can be seized. Both the Ministry of Justice and the GIIF desire to see more aggressive asset forfeiture regulations. However, because the former communist regime employed harsh asset forfeiture techniques against political opponents, lingering political sensitivities make it difficult to approve stringent asset seizure laws. In 20042003, the GIIF suspended 520 transactions worth 9 million euros and blocked 9 accounts worth 5.2 million euros. During the first teneleven months of 20054, the GIIF suspended 5 transactions worth 650,000 euros and blocked 3112 accounts, worth 2.1 million euros. the total value of which amiounts to 9 million euros.

¶13. The GOP recently created an office of counterterrorist operations within the National Police. The office coordinates and supervises regional counterterrorism units and trains local police in counterterrorism measures. Poland has also created a terrorist "watch list" of entities suspected of involvement in terrorist financing. The list contains data based on information derived from similar lists published by the UN, the EU, and the United States Treasury Department. All covered institutions are required to verify that their customers are not included on the watch list. In the event that a covered institution discovers a possible terrorist link, the GIIF has the right to suspend suspicious transactions and accounts. Despite these efforts, Poland has not yet criminalized terrorist financing, arguing that all possible terrorist activities are already illegal and serve as predicate offenses for money laundering and terrorist financing investigations. The Ministry of Justice has completed draft amendments to the criminal code that would criminalize terrorist financing as well as elements of all terrorism-related activity. The amendments have been presented to the Minister of Justice, but have not yet been approved by Parliament.

¶14. Poland is a party to the 1988 UN Drug Convention, the UN International Convention for the Suppression of the Financing of Terrorism, the European Convention on Extradition and its Protocols, the European Convention on Mutual Legal Assistance in Criminal Matters, and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime. In November 2001, Poland ratified the UN Convention against Transnational Organized Crime, which was in fact a Polish initiative.

¶15. As a member of the Council of Europe, Poland participates in the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) and has undergone first and second round mutual evaluations by that group. The GIIF is an active participant in the Egmont Group and in FIU.NET, the EU-sponsored information exchange network for FIUs. Poland continues to behas expressed an interested in joining the Financial Action Task Force (FATF).

¶16. A Mutual Legal Assistance Treaty between the United States and Poland came into force in 1999. In addition, Poland has signed bilateral mutual legal assistance treaties with Sweden, Finland, Ukraine, Lithuania, Latvia, Estonia, Germany, Greece, and Hungary. Polish law requires the GIIF to have memoranda of understanding (MOUs) with other international competent authorities before it can participate in information exchanges. The GIIF has been diligent in executing MOUs with its counterparts in other countries, signing a total of 270 MOUs between 2002 and

¶20043. The GIIF-FinCEN MOU was signed in fall 2003. An additional sixeven memoranda on exchange of financial information with Guernsey, Chile, Croatia, Indonesia, Macedonia, and Switzerland Andorra, Cyprus, Monaco, Germany, Portugal, Thailand, and Ukraine were signed in 20054. Because Poland is an EU member state, the exchange of information between the GIIF and the FIUs of other member states is regulated by the EU Council Decision of October 17, 2000. All information exchanged between the GIIF and its counterparts in other EU states takes place via FIU.NET. For the first teneleven months of 20054, 5840 requests regarding 171124 entities were received by the GIIF from foreign authorities. During the same time period, the GIIF made 147104 requests regarding 270227 entities to foreign authorities.

¶17. Over the past several years, the Government of Poland has worked diligently to implement a comprehensive anti-money laundering regime that meets international standards. Further improvements could be made by promoting additional training at the private sector level and by working to improve communication and coordination between the General Inspectorate of Financial Information and relevant law enforcement agencies. The Code of Criminal Procedure should also be amended to allow the use of Special Investigative Measures in money laundering investigations. This would help to attain a better record of prosecutions and convictions. Poland should also pass specific counterterrorist financing legislation.